

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

ALLIANCE FOR BEHAVIORAL AND DEVELOPMENTAL
DISABILITIES, LTD.¹

Employer

and

Case 6-RC-11630

UNITED STEELWORKERS OF AMERICA, LOCAL
1016, AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Gerald McKinney, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.²

Upon the entire record³ in this case, the Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by March 5, 1999.

³ The Employer timely filed a brief in this matter which has been duly considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent in a single, employer-wide unit all full-time and regular part-time nonprofessional employees, including all program assistants, employed by the Employer at its group homes located in Mercer County, Pennsylvania; excluding all office clerical employees, technical employees, sales employees and guards, professional employees and supervisors as defined in the Act. Although the parties are basically in agreement as to the scope and composition of the unit, the Employer, contrary to the Petitioner, would limit the unit description to read "All full-time and regular part-time program assistants", as the Employer contends that there are no other nonprofessional employees currently employed by the Employer who would appropriately be included in the bargaining unit. In addition, the Employer, contrary to the Petitioner, would specifically limit the geographic scope of the unit description by including the street addresses of the three existing group homes, or, in the alternative, would limit the unit description to group homes operated by the Employer in Sharon, Pennsylvania. Finally, the Employer, contrary to the Petitioner, would not specifically exclude the terms "technical employees and sales employees" from the unit description as there are no individuals employed by the Employer in those classifications.⁴ There are approximately 30 to 34 employees in the petitioned-for unit.⁵ There is no history of collective bargaining for the employees involved herein.

⁴ The parties are in agreement that there are no individuals presently employed by the Employer as technical employees or sales employees.

⁵ The parties agreed that the petitioned-for unit includes three employees who are currently on leaves of absence. The record is silent as to the reason for these leaves of absence, but the Petitioner contends that these employees remain employed by the Employer and are eligible to vote. The Employer did not take a position as to the eligibility of these three employees. Both parties agreed, however, that the employees on leave of absence are not an issue in this proceeding. There is no evidence that any of

The Employer, a Pennsylvania corporation, is engaged in the care and treatment of people with mental retardation. The Employer currently operates three group homes at the following locations: 646 Stambaugh Avenue, 278 Stambaugh Avenue and 783 Pearl Street, all in Sharon, Pennsylvania, which is located in Mercer County. The parties agree, and I find, that the Employer is a health care institution within the meaning of Section 2(14) of the Act.

The Employer employs approximately 30 to 34 program assistants⁶ who assist the clients residing in the Employer's group homes⁷ with their activities of daily living. In addition, the program assistants provide first aid and administer medication. About half of the program assistants are assigned to a specific group home, while the remaining program assistants are "floaters" who work at various times in each of the group homes.

The Employer also employs a program specialist and a program manager, both of whom work for the program director. Each of these three positions is supervisory,⁸ and these individuals do not work directly in the group homes. In addition, the Employer employs a secretary, as well as an executive director and a medical director. The executive director and

these three employees have resigned from the Employer's employ or that their employment has been terminated. The Board has held that an employee absent from work on a leave of absence is presumed to retain both employee status and voting eligibility unless the party seeking to rebut that presumption shows that the employee resigned or was discharged. Air Liquide America Corporation, 324 NLRB 661 (1997), applying Red Arrow Freight Lines, Inc., 278 NLRB 965 (1986). The Employer has declined to take a position as to the eligibility of these employees and has not provided any evidence to rebut the presumption of their continuing eligibility. See Bennett Industries, Inc., 313 NLRB 1363 (1994). Moreover, as noted above, there is no evidence on the record that any of these three employees have resigned or been discharged. As the Petitioner seeks to include these employees, and the Employer has failed to present any evidence rebutting the presumption that they remain eligible voters on leaves of absence, I find that these three employees, Carminal Craig, Shelly Cromartie and Jennifer Mittal, who are currently on leaves of absence, are eligible to vote in the election directed herein.

⁶ The evidence showed that the program assistants refer to themselves as "staff", and that these employees are also referred to by the Employer as "direct care staff" in funding applications. The Employer receives funding for its operations from Mercer County, and four additional nearby counties.

⁷ The clients reside in these homes on a full-time basis.

⁸ The record reflects that the incumbents in these positions have the authority to hire and fire employees. I find, therefore, that they are supervisors within the meaning of Section 2(11) of the Act and they are, accordingly, excluded from the unit found appropriate herein.

the medical director are in parallel positions, and these individuals are responsible for directing the operations of the Employer. There is no board of directors.

The Employer contends, contrary to the Petitioner, that the petitioned-for unit is overly broad in that it includes all full-time and regular part-time nonprofessionals. The Employer argues, and the record clearly establishes, that the only nonprofessionals currently employed by the Employer are the program assistants. As noted above, however, the evidence showed that the Employer refers to the program assistants by the term "direct care staff", and the program assistants refer to themselves as "staff". I find that, particularly in light of the various titles used to describe the Employer's nonprofessional employees, and in order to make clear the employees who are to be included in the bargaining unit, the term "nonprofessional employees" as contained in the petitioned-for unit is appropriate.⁹

As noted above, the Employer further argues, contrary to the Petitioner, that the unit description should limit the geographic scope of the unit to the three specific locations in Sharon, Pennsylvania, where the Employer's three group homes are presently located. Contrary to the position of the Employer, I find that the geographic scope of the unit as set forth by the Petitioner in the petition describes with sufficient particularity the locations of the Employer's operations which are the subject of this petition.

In this regard, the Employer intimates in its post-hearing brief that failing to limit the geographic scope of the unit in the unit description to the three specific group home locations now operated by the Employer would result in the automatic unit inclusion of other facilities "that it may operate in the future within Mercer County" without due regard to whether the "future

⁹ In support of its position, the Employer argues that it is "obvious from the [Petitioner's] position, that [the Petitioner] wishes to describe the collective bargaining unit so as to include not only the existing program assistants, but also any and all nonprofessional employees employed by the Employer in the future at its existing group homes located in Sharon, Pennsylvania, and any others it may operate in the future within Mercer County." There is nothing in the record to suggest that the Employer is contemplating the hire of any nonprofessional employees in the future who will not perform job duties identical or similar in scope to those job duties now being performed by those employees described as "program assistants" or "direct care staff". Accordingly, I find the Employer's concern, that a unit description which delineates the unit inclusion as "all nonprofessional employees" is overly broad, to be without merit.

locations" would constitute "appropriate accretion[s] to the petitioned-for group of employees." In the event that additional facilities are operated in the future by the Employer in Mercer County or in the event a group home is moved from its present location to a location outside of Mercer County, the representational status of the employees then at issue can be decided in a future proceeding.¹⁰

Finally, the Petitioner, contrary to the Employer, would specifically exclude the terms "technical employees and sales employees" from the unit description, although the parties agree that those classifications do not currently exist in the Employer's operation. The Petitioner failed to justify its position that these two classifications should be specifically excluded from the unit description when there is no dispute that those classifications do not currently exist within the Employer's operating structure. I find that it is not appropriate to specifically refer in the exclusion to classifications which do not currently exist, but rather that it is appropriate to use the standard exclusionary language in the unit description, with the added office clerical exclusion.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.:

All full-time and regular part-time nonprofessional employees, including program assistants, employed by the Employer at its facilities located in Mercer County, Pennsylvania; excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

¹⁰ The Employer's reliance on Manor Healthcare Corp., 285 NLRB 224 (1987) to support its argument in this regard is misplaced. Contrary to the contention of the Employer, the single facility presumption, whether in health care or any other field, is not applied where a labor organization seeks to represent a group of employees on an employer-wide, multi-facility basis. In such a case, as here, the employer-wide multi-facility unit is presumptively appropriate for collective bargaining purposes. See Greenhorne & O'Mara, Inc., 326 NLRB No. 57 (1998) and cases cited therein. Further, the Employer agrees that the unit description should include all three of its existing facilities.

An election by secret ballot will be conducted by the Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹¹ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹² Those eligible shall vote whether or not they desire to be represented for collective bargaining by United Steelworkers of America, Local 1016, AFL-CIO, CLC.

Dated at Pittsburgh, Pennsylvania, this 19th day of February 1999.

¹¹ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

¹² In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before February 26, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

Stanley R. Zawatski
Acting Regional Director, Region Six

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